



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-CV-01546-REB-CBS

The Direct Marketing Association,

Plaintiff,

v.

Roxy Huber, in her capacity as Executive
Director, Colorado Department of Revenue,

Defendant.

EXPERT REPORT OF THOMAS J. ADLER, PHD.

I am **Thomas J. Adler, PhD.**, the President of Resource Systems Group, inc. ("RSG"). RSG was retained in May 2010 by Brann & Isaacson, as counsel to the Direct Marketing Association ("DMA"), to perform a survey of Colorado consumers ("Study") to determine their reactions to the requirements of a new Colorado law, enacted in February 2010, and referred to as An Act Concerning the Collection of Sales and Use Taxes On Sales Made By Out-of-State Retailers, and Making an Appropriation Therefor ("the Act").

I. STATEMENT OF OPINIONS.

Based upon my review and consideration of the data and information described in Section II, and applying my experience and expertise in designing, implementing, executing, and/or interpreting hundreds of consumer surveys, I have formed the

opinions and conclusions regarding the Study that are set forth in paragraphs 3, 4, and 6 through 10 of my declaration dated August 10, 2010 ("Declaration"), a copy of which is attached hereto as Exhibit 1, and on page 4 of the *Final Results* of the Study dated August 9, 2010 ("*Final Results*"), a copy of which is attached as Exhibit B to my Declaration. I have also formed the opinions and conclusions regarding the results of the Study set forth in paragraph 5 of my Declaration and on pages 2, 5 and 6 of the *Final Results*.

II. DATA AND INFORMATION CONSIDERED IN FORMING OPINIONS.

The data or other information I considered in forming my opinions includes:

- A. A copy of the Act;
- B. A copy of Emergency Regulation 39-21-112.3.5, which I understand was adopted to implement certain requirements of the Act regarding notices by retailers that do not collect Colorado sales tax;
- C. A copy of Regulation 39-21-112.3.5, which I understand was adopted by the Colorado Department of Revenue to implement all of the notice and reporting provisions the Act;
- D. Data regarding the demographics of the survey panel of Colorado residents used in the Study;
- E. Data regarding the responses of the participants in the Study to the Study questionnaire;

- F. The outcome/results of Study, including the information set forth in the *Final Results*;
- G. KnowledgeNetworks, "*KnowledgePanel Calibrationsm, Using KnowledgePanel[®] to Improve the Sample Representativeness and Accuracy of Opt-In Panel Data*" (February 26, 2010); and
- H. KnowledgeNetworks, Project Statement, CO Tax Policy (May 27, 2010).

III. EXHIBITS.

The Exhibits that may be used to summarize or support my opinions include the documents identified in Section II.

IV. QUALIFICATIONS AND PUBLICATIONS.

Attached hereto as Exhibit 2 is a current copy of my current *curriculum vitae*, which reflects certain updates as compared to the copy attached to my Declaration, and includes a list of publications I have authored in the previous ten years.

V. RECENT TESTIMONY.

I have not testified as an expert at trial or at deposition in a litigation matter during the past four years.

VI. STATEMENT OF COMPENSATION.

RSG's fee for work done through completion of the *Final Results* was \$39,900. Additional compensation will be at RSG's standard hourly rates for the professionals involved. My hourly rate for this matter is \$ 340.44 / hr.

Dated: September 23, 2010

s/ Thomas J. Adler
Thomas J. Adler, PhD.